

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
WACO DIVISION

SONOS, INC. * January 29, 2021
*
VS. * CIVIL ACTION NO. W-20-CV-881
*
GOOGLE LLC *

BEFORE THE HONORABLE ALAN D ALBRIGHT
DISCOVERY HEARING (via Zoom)

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04:29 1 (January 29, 2021, 4:29 p.m.)

04:29 2 DEPUTY CLERK: Court calls Waco Case 6:20-CV-881, Sonos,
04:30 3 Inc. versus Google LLC for a discovery hearing.

04:30 4 THE COURT: If I could hear announcements from the
04:30 5 counsel, please, starting with plaintiff.

04:30 6 MR. SIEGMUND: Good afternoon, Your Honor. This is Mark
04:30 7 Siegmund for plaintiff Sonos, Inc. And with me today I have
04:30 8 Clem Roberts, Alyssa Caridis, Jeffrey Johnson with Orrick. And
04:30 9 then I also have Mr. George Lee with Lee Sullivan Shea & Smith.

04:30 10 Mr. Roberts will be the main speaker today, Your Honor.

04:30 11 THE COURT: Very good.

04:30 12 MR. ROBERTS: And, Your Honor, this is Mr. -- (audio
04:30 13 interruption). I apologize. I'm having some problems with my
04:30 14 camera. I assure you, I dressed up pretty in a suit and
04:30 15 everything, but I can't get my camera to work.

04:30 16 THE COURT: Believe me, after this week I've had with my
04:30 17 technology, I'm very sympathetic and empathetic, so that's
04:30 18 fine.

04:31 19 MS. AMSTUTZ: Good afternoon, Judge Albright. Paige
04:31 20 Amstutz and Stephen Burbank are here for Google. We're joined
04:31 21 by our co-counsel at Quinn Emanuel, Melissa Baily, Jordan
04:31 22 Jaffee and Lindsay Cooper. And also with us is in-house
04:31 23 counsel for Google, Susan Kim.

04:31 24 Ms. Baily will be addressing the Court today for Google.

04:31 25 THE COURT: Okay. And tell me again who is going to be --

04:31 1 Mr. Siegmund, who's going to be speaking on behalf of the
04:31 2 plaintiff?

04:31 3 MR. SIEGMUND: Mr. Clem Roberts, Your Honor.

04:31 4 THE COURT: Okay. Thank you. Very good.

04:31 5 I'm happy to take up whatever issues you'd like for me to.

04:31 6 MR. ROBERTS: Thank you, Your Honor. This is Mr. Roberts.

04:31 7 We have moved to amend the complaint to add the '885
04:31 8 patent to the case. The '885 patent is a continuation of the
04:31 9 '206 patent which is already asserted in the case, and it also
04:32 10 has the same specification with the '996 patent which is also
04:32 11 in the case. So the patent that we're adding is the same
04:32 12 family as two other patents that are in the case.

04:32 13 THE COURT: Okay.

04:32 14 MR. ROBERTS: As I understand it, Google does not oppose
04:32 15 in principle our adding a patent to the case, but they have
04:32 16 asked or made their approval conditional upon extending all of
04:32 17 the deadlines, including the Markman deadline, for eight weeks.
04:32 18 And that is really where this dispute lies.

04:32 19 In our view the schedule that we have for claim
04:32 20 construction ought not to be affected for, I would say, three
04:32 21 reasons. Reason No. 1: The invalidity contentions that are
04:32 22 due between now and the time to claim construction under Your
04:32 23 Honor's rulings are preliminary, and they can be freely
04:33 24 amended.

04:33 25 And so even if or to the extent Google needs additional

04:33 1 time to complete its search for prior art, there's nothing
04:33 2 about providing its preliminary invalidity contentions that
04:33 3 would result in any prejudice to them. We understand and
04:33 4 expect that they may decide they need additional prior art that
04:33 5 they're going to add later, but that shouldn't be an issue
04:33 6 that's prejudicial to them.

04:33 7 THE COURT: Mr. Roberts, tell me when the Markman's
04:33 8 currently set.

04:33 9 MR. ROBERTS: The Markman is, I believe, currently set for
04:33 10 June 4th.

04:33 11 THE COURT: And when are -- I'm sorry. When are
04:33 12 invalidity contentions due?

04:33 13 MR. ROBERTS: So the invalidity contentions are due
04:33 14 February 5th.

04:33 15 THE COURT: February -- say that again. February 5th?

04:33 16 MR. ROBERTS: February 5. Yes.

04:34 17 THE COURT: Okay.

04:34 18 MR. ROBERTS: And we had proposed to push that out to
04:34 19 February 19 for the '885 patent. So for this one patent, if
04:34 20 they need a few additional weeks even to get their preliminary
04:34 21 contentions together, we had said no problem. We had pushed it
04:34 22 to February 19th, and that's in the joint chart that we had
04:34 23 submitted to Your Honor this morning.

04:34 24 THE COURT: Okay. I'm going to put you all -- I'll be
04:34 25 back in just a few seconds. Is this Hannah's case?

04:34 1 MR. ROBERTS: Yes, sir.

04:34 2 THE COURT: Okay. I'll be back in a few seconds.

04:38 3 (Pause in proceedings.)

04:38 4 THE COURT: Okay. Here's what we're going to do. I know
04:38 5 everyone would like to argue, but it would just spoil the
04:38 6 ending. I think I can figure out what I might do.

04:38 7 I'm going to grant the motion to add the '885 patent. I'm
04:38 8 going to move the Markman until Thursday, July 1st. Whatever
04:38 9 dates you have currently will shift back accordingly, which
04:38 10 will give the defendant an additional month on their invalidity
04:38 11 contentions with respect to the '885. All the other dates will
04:38 12 shift accordingly.

04:38 13 And you can check with Hannah. We'll get an order out, or
04:38 14 check with Hannah. I'm not sure whether we'll do it in the
04:39 15 morning or the afternoon on July 1st. I believe that's a
04:39 16 Thursday.

04:39 17 MR. ROBERTS: Thank you. This is Mr. Roberts.

04:39 18 THE COURT: Does that take care of it, Mr. Roberts?

04:39 19 MR. ROBERTS: It does.

04:39 20 The only other thing I'd raise, Your Honor, is two things
04:39 21 for your -- so you know. We gave Google notice last night that
04:39 22 we're going to be dropping the '460 patent from the case as
04:39 23 well. So we're going to remove one patent from the case.
04:39 24 And --

04:39 25 THE COURT: And they're opposing it, right?

04:39 1 MR. ROBERTS: They're not opposing us removing that
04:39 2 patent, I don't think.

04:39 3 (Laughter.)

04:39 4 THE COURT: I was kidding. Go ahead.

04:39 5 MR. ROBERTS: And the other thing, Your Honor, is Google's
04:39 6 filed a motion to stay all of the proceedings, everything
04:39 7 pending the decision on their motion to transfer. We haven't
04:39 8 briefed that yet, but if Your Honor had a view about that and
04:39 9 wanted to give us an indication of whether we would need to
04:39 10 brief that, we'd be happy to brief it if you feel you need
04:39 11 briefing.

04:39 12 THE COURT: No. You don't need to brief that. You can --
04:40 13 I'm going to deny it. However, again -- gosh, I wonder how
04:40 14 many times I can be mandamus'd in one year. But if you all
04:40 15 would be kind enough to -- is the briefing done on the motion
04:40 16 to transfer?

04:40 17 MR. ROBERTS: No. It's not, Your Honor. We served
04:40 18 discovery on them pursuant to your new ground rules, and they
04:40 19 have not yet responded.

04:40 20 THE COURT: Okay. Let's do this, because sometimes I
04:40 21 don't even know things are ripe, and people are unhappy that I
04:40 22 haven't ruled on them. As a general rule, what I try -- the
04:40 23 way we're set up -- and my two favorite law clerks are on this
04:40 24 call on either side, so I'm sure they've advised you of this
04:40 25 anyway. But the way we -- what we try and accomplish in every

04:40 1 case is getting the motion ruled on in advance of the Markman,
04:40 2 which I think is the first substantive issue that would require
04:41 3 me to have jurisdiction for.

04:41 4 And so here what I would recommend that you all do -- let
04:41 5 me see. It's the defendant's motion to transfer.

04:41 6 Ms. Amstutz, as soon as the motion is ripe for
04:41 7 consideration, motion, response, reply, as soon as you all have
04:41 8 filed your reply, let Hannah know and we will set a hearing on
04:41 9 it. It won't be immediately, but we will get a hearing set on
04:41 10 it. And it sounds to me like it will all be done -- especially
04:41 11 since I've moved the Markman back, I will -- I just need to
04:41 12 have the hearing in advance of July 1st, but we will rule on
04:41 13 the motion before we have the hearing.

04:41 14 Obviously if we keep it, we'll have the Markman. If we
04:41 15 don't keep it, we won't have a Markman. But just let us
04:42 16 know -- Google should let us know through their counsel when
04:42 17 it's ripe, and then Hannah can set a hearing for us.

04:42 18 MR. ROBERTS: Okay, Your Honor. Thank you.

04:42 19 MS. AMSTUTZ: Thank you.

04:42 20 THE COURT: You bet. July 1st is probably in the window
04:42 21 where I don't know what we'll be doing in terms of live
04:42 22 hearings and not -- could everyone mute? I can hear someone
04:42 23 and I'm having -- we will be transitioning back to having at
04:42 24 least some live hearings, hopefully by July 1st.

04:42 25 And also in my courtroom now where I may start having more

04:42 1 Markmans in Waco, for this reason we will be able to have them
04:42 2 live in court and also be able to use Zoom so that clients and
04:42 3 other people can attend. So we may have the best of both
04:42 4 worlds.

04:43 5 And so as we get closer, I would say late May, early June,
04:43 6 whoever it is that's communicating with Hannah ought to help --
04:43 7 ought to remind us we need to figure out where -- whether the
04:43 8 Markman will be in person or not.

04:43 9 I'm actually happy, if the lawyers are happy, to do it by
04:43 10 Zoom. You know, I did 50 Zoom Markmans last year and I thought
04:43 11 they went great. I thought they went great in part because all
04:43 12 the clients could attend without having to travel. The lawyers
04:43 13 could attend without having to travel. And the very best thing
04:43 14 was, you could allow some younger -- well, everyone on this
04:43 15 call is younger than me, but less experienced lawyers to get to
04:43 16 argue things without them having to travel to Austin or Waco to
04:43 17 do it, which I thought was a good thing as well.

04:43 18 So if the parties in this case decide a Zoom hearing is
04:43 19 fine, it's certainly fine with me. With the preliminary
04:43 20 constructions, I don't think I've had any problem being able to
04:44 21 understand, you know, arguments and stuff. And I've gotten
04:44 22 pretty comfortable with them.

04:44 23 But if you'd rather do it in person, and we're doing
04:44 24 things in person in July and people can travel and all that,
04:44 25 which I don't know about now, let us know and we can take it up

04:44 1 early June.

04:44 2 I'll start with Mr. Siegmund. Is there anything else we
04:44 3 need to take up on behalf of the plaintiff?

04:44 4 MR. SIEGMUND: No, sir. I think that covers it, and have
04:44 5 a good weekend, Judge.

04:44 6 THE COURT: You bet.

04:44 7 And I feel bad if I didn't give equal dignity.

04:44 8 Mr. Burbank, is there anything else that we need to do on
04:44 9 behalf of Google? This is your chance to talk. Don't blow it.

04:44 10 MR. BURBANK: I don't think so, Your Honor, but I'll let
04:44 11 Ms. Baily jump in.

04:44 12 THE COURT: I think someone else may have been trying to
04:44 13 tell me yes. So I'm happy to hear it.

04:44 14 MS. BAILY: Your Honor, this is Melissa Baily for Google.
04:44 15 I heard everything you said and I appreciate it. I'm just
04:45 16 flagging for the Court that I would have to look at it more
04:45 17 closely. Based on the schedule as you articulated it for the
04:45 18 Markman hearing and as I understand the venue dispute schedule
04:45 19 to play out, it may be difficult under that schedule to get
04:45 20 venue done first.

04:45 21 And just so you know, in our motion it wasn't just a
04:45 22 motion to stay, it also had some alternative proposals for
04:45 23 being able to get venue done quickly and ahead of Markman. So
04:45 24 I heard everything you said. I just need to look at it more
04:45 25 closely. And I just wanted to flag for you that, you know,

04:45 1 we'll make it work as best we can to get venue teed up for you
04:45 2 before Markman.

04:45 3 THE COURT: Well, if you have any problem -- I'm going
04:45 4 to -- what I'm going to do at the moment is, which I don't very
04:45 5 often really do, is punt this back to you all, to tell you my
04:45 6 preference would be to -- strong preference would be to handle
04:46 7 the motion to transfer in advance. I think that's what's best.

04:46 8 If Google can -- and I'm putting this on you only because
04:46 9 my guess is the issues are the plaintiff's going to want
04:46 10 discovery, and how we get the discovery done in advance of how
04:46 11 the -- and so I'm not picking on Google. I'm just
04:46 12 acknowledging the reality of the way this works. If Google
04:46 13 can, for lack of a better word, cooperate, or whatever you want
04:46 14 to use, and get to the plaintiffs as quickly as possible
04:46 15 whatever information that the plaintiff thinks they need for
04:46 16 this motion, that's one way of accomplishing it. But I'm not
04:46 17 saying Google has to do anything other than what they think is
04:46 18 appropriate.

04:46 19 If the plaintiff feels like there's information from
04:46 20 Google they want that Google feels is inappropriate, that's why
04:46 21 I'm here. I'm happy to hear that as well.

04:47 22 But what I'm going to do is punt this for a little while
04:47 23 and see how you all are able to deal with getting whatever
04:47 24 discovery the plaintiff thinks it needs to the discovery
04:47 25 quickly enough that they can file the motion quickly enough so

04:47 1 that I can hear the motion in advance of the Markman. If you
04:47 2 all need my intervention, if you all -- by you all, I mean
04:47 3 either party or both -- feel like you need my intervention to
04:47 4 help make that happen or for me to push back the Markman, I'm
04:47 5 happy to do that.

04:47 6 MS. BAILY: Your Honor, I appreciate that. I think even
04:47 7 if we were to, you know, get everything resolved in a
04:47 8 cooperative way, just the normal rules, I think, would make it
04:47 9 hard for us to get venue done first, even if there were no
04:47 10 issues. So I heard what you said and we'll do the best we can
04:47 11 and come back to you if we think that it's not going to play
04:47 12 out that way.

04:47 13 THE COURT: And if I need to shorten the times for
04:48 14 response and reply, I'm happy to do that as well. In other
04:48 15 words, I try to be as lawyer-friendly as possible. And I've
04:48 16 done just about -- everything that you all are doing, I've done
04:48 17 on both sides. So I appreciate -- and I've had cases where,
04:48 18 you know, the judge didn't get to the motion to transfer in
04:48 19 time, and I understand why it's frustrating. So I want to be
04:48 20 sympathetic to that and try and get that resolved as well.

04:48 21 MS. BAILY: Thank you, Your Honor.

04:48 22 THE COURT: So I am -- I'll make myself as available as
04:48 23 you all need me to to help out, if you see that's what needs
04:48 24 happen.

04:48 25 MS. BAILY: Thank you, Your Honor.

04:48 1 THE COURT: But I still want to give Mr. Burbank the last
04:48 2 chance to chat, because...

04:48 3 MR. BURBANK: I think that's all for defendant, Your
04:48 4 Honor. Unless Paige disagrees, I think we're good.

04:49 5 THE COURT: Very good. Thank you all. I hope you have a
04:49 6 wonderful weekend, and I hope I see those of you who live near
04:49 7 me in the near future. Take care.

04:49 8 (Hearing adjourned at 4:49 p.m.)

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1 UNITED STATES DISTRICT COURT)
2 WESTERN DISTRICT OF TEXAS)
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4 I, Kristie M. Davis, Official Court Reporter for the
5 United States District Court, Western District of Texas, do
6 certify that the foregoing is a correct transcript from the
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